



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

August 3, 2022

In Reply Refer To:

EPA Complaint Nos. 05RNO-22-R6, 06RNO-22-R6

Toby Baker
Executive Director
Texas Commission on Environmental Quality
Post Office Box 13087, MC 109
Austin, TX 78711-3087
toby.baker@tceq.texas.gov

Re: Acceptance of Administrative Complaints

Dear Director Baker:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation two administrative complaints filed against the Texas Commission on Environmental Quality (TCEQ), that were received by the EPA on April 4, 2022, and May 17, 2022 (collectively the Complaints). The complaints allege that TCEQ discriminated on the basis race and national origin in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.*, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7. Specifically, the Complaints allege that, through its concrete batch permit process, affirmed most recently by the adoption of an amendment to the 2012 Concrete Batch Plants Standard Permit (CBPs), TCEQ subjects Black and Hispanic/Latinx residents of Harris County, Texas, including those with limited English proficiency (LEP), to discrimination on the basis of race and national origin, including with respect to its public participation process.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

After careful consideration, ECRCO has determined that the allegations raised in the Complaints meet the jurisdictional requirements stated above. First, the allegations are in writing. Second, the Complaints describe alleged acts of discrimination that, if true, may violate EPA's nondiscrimination regulation. Third, the Complaints were filed within 180-days of the alleged discriminatory act(s). Finally, TCEQ is a recipient of EPA financial assistance.

In general, ECRCO will accept, reject, or refer a complaint after considering the four jurisdictional factors described in the regulation. However, ECRCO will also consider certain prudential factors in determining, for example, whether to proceed with an investigation, reject, or reject without prejudice a complaint during the pendency of litigation or other proceedings which could help inform ECRCO's investigation.¹ In this case, there are administrative appeals pending related to Concrete Batch Plants Standard Permit. However, TCEQ continues to take action pursuant to the Concrete Batch Plants Standard Permit that raise continuing issues of civil rights compliance.² As such, ECRCO has determined that neither this or other prudential factors support rejection of the Complaints and ECRCO is accepting these complaints for investigation.

As the allegations in each of the two complaints are substantially similar, ECRCO will investigate the complaints jointly. ECRCO will investigate the following issues:

1. Whether TCEQ's criteria or methods of administering its Concrete Batch Plant permitting process for concrete batch plants in Harris County Texas, including its adoption of the 2021 Amended Concrete Batch Plant Permit, has the effect of subjecting persons to discrimination on the basis of race or national origin in violation of Title VI and EPA's implementing regulation at 40 C.F.R. Part 7; and
2. Whether TCEQ discriminated on the basis of national origin in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation at 40 C.F.R. Part 7 by failing to provide meaningful public participation to persons with limited English proficiency in connection with the issuance of the 2021 Amended CBP Standard Permit.

The initiation of an investigation of the issues above is not a decision on the merits. ECRCO is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the Complainants, and determine next steps utilizing ECRCO's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and ECRCO's Case Resolution Manual (CRM) will be

¹ See U.S. EPA, ECRCO Case Resolution Manual, Section 1.8, at 10-12 (stating that the "... same civil rights allegations have been filed by the complainant against the same recipient in state or federal court individually or through a class action. ...") available at https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

² It is also ECRCO's understanding that defendants have filed a jurisdictional challenge to the plaintiff's administrative appeal and that a hearing on that jurisdictional challenge has been set for September 28, 2022. In addition, the administrative complaint does not include civil rights allegations.

utilized for the complaint investigation process. We invite you to review ECRCO's Case Resolution Manual for a more detailed explanation of ECRCO's complaint resolution process, available at https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

ECRCO is providing TCEQ with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of this letter notifying TCEQ of the acceptance of Administrative Complaint Nos. 05RNO-22-R6 and 06RNO-22-R6. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that ECRCO shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, ECRCO will contact TCEQ and the Complainants within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the alternative dispute resolution (ADR)³ and informal resolution agreement⁴ processes as potential options for resolution of the issues, which ECRCO has accepted for investigation. If TCEQ (and the Complainants with respect to ADR) agrees to engage in either of these potential resolution processes, ECRCO will suspend its 180-day timeframe for issuing Preliminary Findings⁵ for the duration of the IRA process. In the event that either of these potential resolution processes fails to result in an agreement, ECRCO will notify TCEQ as well as the Complainants that ECRCO has resumed its complaint investigations and will issue preliminary findings within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.⁶

Please be advised that copies of the complaints are enclosed, consistent with 40 C.F.R. § 7.120(e). ECRCO is releasing the complaint with appropriate redactions consistent with the Freedom of Information Act (FOIA) and the Privacy Act and will only release identifying information to the extent necessary to comply with 40 C.F.R. Parts 5 and 7.⁷

The EPA regulation prohibits applicants, recipients, and others persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they have either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with ECRCO.

³ EPA ECRCO's Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or complaint allegations between the complainant and recipient, through the use of a professionally trained mediator. *See* U.S. EPA, ECRCO Case Resolution Manual, Section 3.3, at 24 (2021) (available at https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).

⁴ Informal Resolution occurs between ECRCO and the recipient. *See* U.S. EPA, ECRCO Case Resolution Manual, Section 3.1, at 22 (2021) (available at https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).

⁵ *See* 40 C.F.R. § 7.115(c)(1).

⁶ *See* 40 C.F.R. § 7.115(c).

⁷ Freedom of Information Act, 5 U.S.C. § 552(b)(6) and (7)(c) and the Privacy Act of 1974, 5 U.S.C. § 552a.

If you have any questions about this letter, please feel free to contact me at 202-564-9649, by email at dorka.lilian@epa.gov, or Jack Pantziris, Case Manager, at pantziris.jack@epa.gov, or 202-564-2466.

Sincerely,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosure: Via Email, Redacted Copy of the Complaints

cc: Ariadne Goerke
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Helena Wooden-Aguilar
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
US EPA Region 6

James McGuire
Regional Counsel
US EPA Region 6